IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 4360 of 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ? **1 to 5 NO**

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PARULBEN MAKWANA & 5 - Applicant(s)
Versus
NANDUBHAI SHANKERLAL VYAS & 1 - Respondent(s)

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Appearance :
MR DD VYAS for Applicant(s) : 1 - 6.
NOTICE SERVED for Respondent(s) : 1,
MR HL JANI ADDL PUBLIC PROSECUTOR for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 12/06/2007

ORAL JUDGMENT :

1. The petitioners, officers of District Panchayat, have invoked the provisions of section 482 of the Code of Criminal Procedure, 1973 for setting aside the proceedings of Criminal Case

No.288 of 1992 wherein a complaint for the offence punishable under section 166 of the Indian Penal Code, 1860 was made against them and order dated 16.10.1992 to issue process against them was made by learned Judicial Magistrate, First Class, Sayala. The complaint, in substance, alleged that the petitioners, as members of the selection committee, had violated the rules and guidelines issued for selection of helper in Anganwadi and thereby deprived the wife of the original complainant of an appointment at Navagadh Anganwadi.

2. The present proceedings before this court have a chequered history insofar as, after obtaining an initial order of admission and notice as to interim relief, petitioners had not cared to remove office objections for four years and, after dismissal of the petition for default, it was restored by order dated 24.9.1997 in Criminal Misc. Application No.2834 of 1997 wherein it was observed that vakalatnamas of four of the original petitioners were not filed. Learned advocate for the petitioners stated at that stage that he had then kept with him vakalatnamas of the applicants and, with a direction to place the vakalatnamas on record within two days, the petition was restored.

Thereafter, the petition appears to have been listed for hearing straightaway in the year 2007 and thus initial grant of interim relief has operated all throughout, for 15 years without the matter being ever heard on merits in the meantime.

3. Arguing the petition on merits, learned counsel Mr.Deep D.Vyas submitted that the original complaint was frivolous insofar as the petitioners did not have power and authority to appoint any one at the Anganwadi and they were joined as accused persons only in their capacity of being members of the selection committee. He conceded that the rules or the guidelines which were alleged to have been violated by the petitioners in selecting other candidate for appointment at Navagadh Anganwadi were supposed to be with the Board and a copy thereof was available but not produced before the court. Therefore, it could not be substantiated that the petitioners had not violated any rules or guidelines issued by the Government from time to time for selecting the candidates. In any case, it is a matter of evidence and proof before the trial court wherein the burden of proof lies upon the complainant. Thus, in short, no ground is made out for exercise of extraordinary

jurisdiction of this court. Instead, it appears that the proceedings before this court have resulted into practically frustrating the complaint and amounted to abuse of the process of court. Therefore, the petition is required to be dismissed with appropriate order as to cost. Accordingly, it is dismissed with cost quantified at Rs.2,000/- which shall be paid in equal proportion to the respondents by the petitioners. Rule is discharged and interim relief is vacated.

Sd/-

(D.H.Waghela, J.)

(KMG Thilake)